

**Letter of Findings Number: 10-0356P
Negligence Penalty
For the Years 2007 and 2008**

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ISSUE

I. Tax Administration – Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer paints and powder coats metals and plastics for other manufacturers as a part of the manufacturing process. The Indiana Department of Revenue ("Department") conducted a sales and use tax audit of Taxpayer for the years 2007 and 2008. The audit found that Taxpayer had no taxable sales. As a result of the audit, however, Taxpayer was assessed additional use tax, penalty, and interest. Taxpayer did not contest the assessment of tax, however Taxpayer protested the assessment of the ten-percent negligence penalty. Taxpayer did not request a hearing on this matter. This Letter of Findings is based on information in Taxpayer's file. Additional facts will be provided as necessary.

I. Tax Administration – Negligence Penalty.

DISCUSSION

The audit's assessment of use tax included assessments on taxable purchases on which no sales tax or use tax had been paid. These taxable purchases include such items as computer supplies, software purchases, auto parts, lotions and soaps, medical supplies, toilet tissue, and miscellaneous tools. The audit recommended the ten percent penalty because Taxpayer had no use tax system in place, nor had Taxpayer reported and paid any use tax.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer argues that it was not aware that some vendors from which it made purchases had not charged sales tax on the purchases. Taxpayer states that this was not intentional avoidance of tax but rather an administrative oversight. Taxpayer points to the fact that it did not contest the audit's assessment of use tax and that it now has a use tax system in place.

The fact that Taxpayer, a sophisticated manufacturer and industrial processor, did not have a use tax system in place describes the type of negligence that the penalty is intended to address.

FINDING

Taxpayer's protest is denied.

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